

12 ABDISAMAD AHMED, et al.,
13 Plaintiffs,
14 v.
15 COUNTY OF SANTA CLARA, et al.
16 Defendants.

Case No. 20-CV-05498-LHK

**ORDER GRANTING MOTION TO
DISMISS WITH PREJUDICE IN PART
AND WITH LEAVE TO AMEND IN
PART**

Re: Dkt. No. 9

18 Plaintiffs Abdisamad Ahmed and Kim Hadd (collectively, “Plaintiffs”) sue the County of
19 Santa Clara (“The County”) and individuals whose identities are unknown to Plaintiffs
20 (collectively, “Defendants”) for (1) general negligence; (2) public entity negligence; and (3)
21 violation of rights under 42 U.S.C. § 1983. Before the Court is the County’s motion to dismiss
22 Plaintiffs’ complaint. Having considered the parties’ submissions, the relevant law, and the record
23 in this case, the Court GRANTS the County’s motion to dismiss with prejudice in part and with
24 leave to amend in part.¹

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26 ¹ The County’s motion to dismiss contains a notice of motion paginated separately from the
27 memorandum of points and authorities in support of the motion. ECF No. 9 at 1–2. Civil Local
28

I. BACKGROUND**A. Factual Background**

On March 15, 2019, Harris Ahmed (“Harris”), Plaintiffs’ 21-year-old son, was admitted to the Barbara Arons Pavilion of the Santa Clara Valley Medical Center, which is owned and operated by the County. ECF No. 1-1 (“Compl.”) ¶¶ 10, 12.

According to Plaintiffs, Harris was admitted to receive acute psychiatric services after he attempted to run across Interstate 280. *Id.* ¶ 10. Plaintiffs allege that the notice accompanying Harris’s admission “designated him as gravely disabled[,] describing [Harris] as very unpredictable, agitated, hyper-religious, threatening at times, yelling and unable to care for himself.” *Id.*

Plaintiffs further allege that the notice ordered that Harris be held in the Santa Clara Valley Medical Center until March 29, 2019. *Id.* Despite the notice, Harris was allegedly released on March 26, 2019. *Id.* On the day Harris was released, he allegedly displayed the same behavior described in the notice. *Id.* On March 28, 2019, two days after his release, Harris walked across Interstate 280 and was struck and killed by a vehicle. *Id.*

Plaintiffs allege that the County “knew or should have known that [Harris] was unfit to be released prematurely” but “failed to take necessary steps to prevent [Harris’s] release.” *Id.* ¶ 12. Plaintiffs allege that, as a result of the County’s failure, Harris “remained in an unfit and delirious state, entered onto [I]nterstate 280 . . . and was struck and killed.” *Id.*

Following Harris’ death, Plaintiffs filed a claim with the County on September 25, 2019. Haley Decl. Exh. A. The County denied the claim on November 1, 2019 and mailed the notice that the claim had been denied on the same day. ECF No. 10 Exh. A. The notice had a section entitled “Warning,” which stated that “[s]ubject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this

Rule 7-2(b) provides that the notice of motion and points and authorities should be contained in one document with the same pagination.

1 claim.” *Id.*

2 **B. Procedural History**

3 On June 4, 2020, Plaintiffs filed suit in the California Superior Court for the County of
4 Santa Clara as heirs to Harris and representatives of Harris’s estate. ECF No. 1-1. The Complaint
5 alleges three causes of action: (1) general negligence under California Government Code § 815.2;
6 (2) public entity negligence under California Government Code §§ 815.2 and 820;² and (3)
7 violation of rights under 42 U.S.C. § 1983. *Id.* On July 9, 2020, Plaintiffs served the Complaint on
8 the County. ECF No. 1 ¶ 1. On August 7, 2020, the County removed the instant case to this Court.
9 ECF No. 1.

10 On August 14, 2020, the County filed the instant motion to dismiss Plaintiffs’ Complaint,
11 ECF No. 9 (“Mot.”), and filed a request for judicial notice in support of its motion to dismiss, ECF
12 No. 10. On August 28, 2020, Plaintiffs filed an opposition, which was supported by a declaration
13 from Plaintiffs’ counsel, Matthew Haley. ECF No. 12 (“Opp’n”); Haley Decl. On September 4,
14 2020, the County filed a reply. ECF No. 13 (“Reply”).

15 The Court may take judicial notice of matters that are either “generally known within the
16 trial court’s territorial jurisdiction” or “can be accurately and readily determined from sources
17 whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). Public records are proper
18 subjects of judicial notice. *See, e.g., United States v. Black*, 482 F.3d 1035, 1041 (9th Cir. 2007).
19 However, to the extent any facts in documents subject to judicial notice are subject to reasonable
20 dispute, the Court will not take judicial notice of those facts. *See Lee v. City of Los Angeles*, 250
21 F.3d 668, 689 (9th Cir. 2001), *overruled on other grounds by Galbraith v. County of Santa Clara*,
22 307 F.3d 1119 (9th Cir. 2002).

23 Here, the County requests judicial notice of the County’s November 1, 2019 notice

24 _____
25 ² The header in Plaintiffs’ complaint for the second cause of action references California Evidence
26 Code § 669. However, that section solely governs when the failure of a person to exercise due care
27 is presumed, and it does not give rise to a cause of action. In addition, the paragraphs in support of
the second cause of action reference California Government Code sections 815.2(a) and 820(a).
Thus, the Court considers the second cause of action as if it were brought under those sections.

1 rejecting Plaintiffs' claim pursuant to the California Government Claims Act (CGCA), California
2 Government Code § 810 et seq. ECF No. 10. Plaintiffs do not contest the validity of the notice.
3 Courts routinely conclude that such notices are public records that are proper subjects of judicial
4 notice. *See, e.g., Williams v. Nat'l R.R. Passenger Corp.*, Case No. 19-CV-00576-YGR, 2019 WL
5 4848577, at *1 n.2 (N.D. Cal. Oct. 1, 2019) (taking judicial notice of a City's notice rejecting the
6 plaintiff's claim); *Roy v. Contra Costa County*, Case No. 15-CV-02676-TEH, 2015 WL 5698743,
7 at *2 n.6 (N.D. Cal. Sept. 29, 2015) (concluding that a City's notice rejecting the plaintiff's claim
8 was the proper subject of judicial notice); *Wilhite v. City of Bakersfield*, Case No. 11-CV-1692-
9 AWI, 2012 WL 273088, at *3 n.4 (E.D. Cal. Jan. 30, 2012) (taking judicial notice of a County's
10 responses to plaintiff's claim as public records). Similarly, the Court concludes in the instant case
11 that the County's letter denying Plaintiffs' claim is a public record that is a proper subject of
12 judicial notice. Thus, the Court GRANTS the County's request for judicial notice.

13 **II. LEGAL STANDARD**

14 **A. Dismissal Pursuant to Federal Rule of Civil Procedure 12(b)(6)**

15 Rule 8(a) of the Federal Rules of Civil Procedure requires a complaint to include "a short
16 and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a).
17 A complaint that fails to meet this standard may be dismissed pursuant to Federal Rule of Civil
18 Procedure 12(b)(6). Rule 8(a) requires a plaintiff to plead "enough facts to state a claim to relief
19 that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim
20 has facial plausibility when the plaintiff pleads factual content that allows the court to draw the
21 reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556
22 U.S. 662, 678 (2009). "The plausibility standard is not akin to a probability requirement, but it
23 asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* (internal
24 quotation marks omitted). For purposes of ruling on a Rule 12(b)(6) motion, the Court "accept[s]
25 factual allegations in the complaint as true and construe[s] the pleadings in the light most
26 favorable to the nonmoving party." *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025,

1 1031 (9th Cir. 2008).

2 The Court, however, need not accept as true allegations contradicted by judicially
3 noticeable facts, *see Shwarz v. United States*, 234 F.3d 428, 435 (9th Cir. 2000), and it “may look
4 beyond the plaintiff’s complaint to matters of public record” without converting the Rule 12(b)(6)
5 motion into a motion for summary judgment, *Shaw v. Hahn*, 56 F.3d 1128, 1129 n.1 (9th Cir.
6 1995). Nor must the Court “assume the truth of legal conclusions merely because they are cast in
7 the form of factual allegations.” *Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011) (per
8 curiam) (quoting *W. Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981)). Mere
9 “conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to
10 dismiss.” *Adams v. Johnson*, 355 F.3d 1179, 1183 (9th Cir. 2004).

11 **B. Leave to Amend**

12 If the Court determines that a complaint should be dismissed, it must then decide whether
13 to grant leave to amend. Under Rule 15(a) of the Federal Rules of Civil Procedure, leave to amend
14 “shall be freely given when justice so requires,” bearing in mind “the underlying purpose of Rule
15 to facilitate decisions on the merits, rather than on the pleadings or technicalities.” *Lopez v.*
16 *Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (alterations and internal quotation marks
17 omitted). When dismissing a complaint for failure to state a claim, “a district court should grant
18 leave to amend even if no request to amend the pleading was made, unless it determines that the
19 pleading could not possibly be cured by the allegation of other facts.” *Id.* at 1130 (internal
20 quotation marks omitted). Accordingly, leave to amend generally shall be denied only if allowing
21 amendment would unduly prejudice the opposing party, cause undue delay, or be futile, or if the
22 moving party has acted in bad faith. *Leadsinger, Inc. v. BMG Music Publ’g*, 512 F.3d 522, 532
23 (9th Cir. 2008).

24 **III. DISCUSSION**

25 Plaintiffs bring three claims: (1) general negligence under California Government Code §
26 815.2; (2) public entity negligence under California Government Code §§ 815.2 and 820; and (3)

1 violation of rights under 42 U.S.C. § 1983. *Id.* The County moves to dismiss all three claims. The
2 Court first addresses the two state law claims. The Court then addresses the Section 1983 claim.

3 **A. State Law Claims**

4 The County argues that Plaintiffs' two state law claims should be dismissed with prejudice
5 because Plaintiffs did not file their complaint within the statute of limitations under the CGCA.
6 Mot at 5–6. The Court agrees for the reasons explained below.

7 Before a plaintiff can sue a public entity or employee for monetary damages, he or she
8 must first file a claim with a governmental entity pursuant to the CGCA. Cal. Gov't Code § 945.4;
9 *Briggs v. Lawrence*, 230 Cal. App. 3d 605, 613 (1991). The plaintiff must file a claim no more
10 than six months after the cause of action has accrued. Cal. Gov't Code § 911.2; *Curtis T. v. County*
11 *of Los Angeles*, 123 Cal. App. 4th 1405, 1415 (2004). The plaintiff must then sue no more than six
12 months after a public entity mails written notice that it has rejected the plaintiff's claim. Cal. Gov't
13 Code § 945.6(a)(1); *County of Los Angeles v. Superior Court*, 127 Cal. App. 4th 1263, 1267–68
14 (2005). This six-month period applies from the date the public entity mails the written notice,
15 regardless of whether the plaintiff actually receives the mailed notice. *County of Los Angeles*, 127
16 Cal. App. 4th at 1271 (“That [Plaintiff’s counsel] never received the notice that the claim had been
17 deemed denied is irrelevant.”). “Failure to comply with this six-month limitation mandates
18 dismissal of the lawsuit.” *Apollo v. Gyaami*, 167 Cal. App. 4th 1468, 1486 n.14 (2008); *see also*
19 *Martell v. Antelope Valley Hosp. Med. Ctr.*, 67 Cal. App. 4th 978, 982–83 (1998) (dismissing a
20 lawsuit for failure to comply with the six-month limitation because “[w]ith rare exceptions, courts
21 have held that the six-month statute of limitations is inviolate”) (quoting *Anson v. County of*
22 *Merced*, 202 Cal. App. 3d 1195, 1200 (1988)); *Dowell v. County of Contra Costa*, 173 Cal. App.
23 3d 896, 901 (1985) (“Where the notice of rejection complies with [California Government Code]
24 [S]ection 913[,] the six-month statute of limitations cannot be extended by provisions outside the
25 Tort Claims Act.”).

26 In the instant case, the County denied Plaintiffs' claim on November 1, 2019. *See* ECF No.
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1 10 Exh. A (“Notice of Rejection of Claim”). The County mailed the notice that the claim had been
2 denied that same day. *See ECF No. 10 Exh. A (“Proof of Service by Mail”)*. Accordingly, the
3 CGCA gave Plaintiffs until May 1, 2020, six months after the County mailed the notice, to sue.
4 Cal. Gov’t Code § 945.6(a)(1); *County of Los Angeles*, 127 Cal. App. 4th at 1270–71.

5 As Plaintiffs point out, the Superior Court for the County of Santa Clara designated March
6 17, 2020 to March 27, 2020; March 30, 2020 to April 28, 2020; and April 29, 2020 to May 29,
7 2020 as holidays in response to the coronavirus pandemic. Haley Decl. Exh. C-1 (“For purposes of
8 computing time for filing papers with the Court under Code of Civil Procedure sections 12 and
9 12a, the time from March 17, 2020 to March 27, 2020, inclusive, is deemed to be holidays . . .”);
10 Exh. C-2 (stating the same as to the time from March 30, 2020 to April 28, 2020); Exh. C-3
11 (stating the same as to the time from April 29, 2020 to May 29, 2020). Section 12 of the California
12 Code of Civil Procedure provides that “[t]he time in which any act provided by law is to be done
13 is computed by excluding the first day, and including the last, unless the last day is a holiday, and
14 then it is also excluded.” Cal. Code Civ. Proc. § 12. Similarly, Section 12a states that “[i]f the last
15 day for the performance of any act provided or required by law to be performed within a specified
16 period of time is a holiday, then that period is hereby extended to and including the next day that
17 is not a holiday.” Cal. Code Civ. Proc. § 12a(a).

18 May 1, 2020 through May 29, 2020 were holidays, so the period of time in which Plaintiffs
19 could file their complaint extended until the next day that was not a holiday. Because May 30,
20 2020 was a Saturday, the next day that was not a holiday was Monday, June 1, 2020. Accordingly,
21 Plaintiffs had to file their complaint by June 1, 2020. However, Plaintiffs did not file their
22 complaint until June 4, 2020. *See Compl.* Thus, Plaintiffs’ complaint is untimely.

23 Plaintiffs argue that the holidays designated in response to the coronavirus pandemic
24 (March 17, 2020 to March 27, 2020; March 30, 2020 to April 28, 2020; and April 29, 2020 to May
25 29, 2020) tolled the statute of limitations at least 59 days, permitting Plaintiffs to file by July 1,
26 2020. Opp’n at 6–7. However, the statutes merely state that holidays have an impact when they

1 occur on the last day to perform an act, in which case the act can be performed on the next day that
2 is not a holiday. *See Cal. Code Civ. Proc.* §§ 12, 12a.

3 Under the previous version of Section 12a, Plaintiffs' position would have more merit.
4 Section 12a used to state: "As to any act provided or required by law to be performed within a
5 specified period of time, such period of time is hereby extended . . . [b]y such number of days as
6 equals the number of holidays (other than special holidays) appointed by the President or by the
7 Governor and which occur within or during such period." *Laubisch v. Roberdo*, 277 P.2d 9, 13
8 (Cal. 1954) (quoting Cal. Code Civ. Prod. § 12a (1954)). By contrast, the current version of
9 Section 12a states that a holiday is only excluded if the holiday occurs on the last day of the
10 limitations period. See Cal. Code Civ. Proc. § 12a(a). Thus, under the current version of Section
11 12a, a holiday does not have an impact unless it occurs on the last day of the limitations period.

12 Accordingly, several courts have dismissed complaints as untimely when the complaint
13 was not filed on the next day that is not a holiday. *See Beriones v. California*, Case No. 05-CV-
14 1747-LAB, 2007 WL 173868, at *3 (S.D. Cal. Jan. 8, 2007) (concluding that the plaintiff had
15 missed the six month limitations period where the last day to file was a holiday and the plaintiff
16 did not file on the day following the holiday); *see also K.C. ex rel. Rick v. Upland Unified Sch.*
17 *Dist.*, Case No. EDCV-06-1314-VAP, 2008 WL 4553212, at *3 n.7 (C.D. Cal. Oct. 7, 2008)
18 (concluding that claims were untimely where the last day to file was a holiday and the plaintiff
19 filed the claims two days after the first day following the holiday). Similarly, the Court concludes
20 that Plaintiffs' complaint was untimely filed. Because Plaintiffs did not timely file, the Court must
21 dismiss Plaintiffs' state law claims. *See Apollo*, 167 Cal. App. 4th at 1486 n.14 ("Failure to
22 comply with [the] six-month limitation mandates dismissal of the lawsuit.").

23 The Court now considers whether to dismiss Plaintiffs' state law claims with prejudice or
24 leave to amend. Dismissal with prejudice is warranted when amendment would be futile, unduly
25 prejudice the opposing party, or cause undue delay, or the moving party has acted in bad faith. *See*
26 *Leadsinger*, 512 F.3d at 532. Because Plaintiffs did not timely file, amendment would be futile.

See Hoang v. Bank of America, N.A., 910 F.3d 1096, 1103 (9th Cir. 2018) (“[L]eave to amend need not be granted when ‘any amendment would be an exercise in futility,’ . . . such as when the claims are barred by the applicable statute of limitations.”) (quotation omitted); *Platt Elec. Supply, Inc. v. EOIFF Elec., Inc.*, 522 F.3d 1049, 1060 (9th Cir. 2008) (affirming district court’s denial of leave to amend where “[Plaintiff’s] claims are barred by the statute of limitations, [so] any amendments would have been futile”). Thus, the Court GRANTS the County’s motion to dismiss Plaintiffs’ state law claims with prejudice.

B. Section 1983 Claim

The County next argues that Plaintiffs' claim under 42 U.S.C. § 1983 should be dismissed. Mot. at 8–10. To state a Section 1983 claim, plaintiffs must plead that “(1) the defendants acted under color of state law and (2) deprived plaintiff of rights secured by the Constitution or federal statutes.” *WMX Techs., Inc. v. Miller*, 197 F.3d 367, 372 (9th Cir. 1999) (en banc) (quoting *Gibson v. United States*, 781 F.2d 1334, 1338 (9th Cir. 1986)).

“In order for a person acting under color of state law to be liable under section 1983[,] there must be a showing of personal participation in the alleged rights deprivation: there is no respondeat superior liability under section 1983.” *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002).³ “A government entity cannot be held liable under 42 U.S.C. § 1983, unless a policy, practice, or custom of the entity can be shown to be a moving force behind a violation of constitutional rights.” *Dougherty v. City of Covina*, 654 F.3d 892, 900 (9th Cir. 2011) (citing *Monell v. Dep’t of Soc. Servs. of the City of New York*, 436 U.S. 658, 691 (1978)). To establish a

³ The Complaint does not make it clear whether the Section 1983 claim is brought just against the County or also against individual defendants whose identities are unknown to Plaintiffs. The Complaint says that the claim is “Against Defendant” in the singular, and the Complaint’s allegations are against the County. See Compl. ¶¶ 31, 32, 34, 35. Both suggest that the claim is against only the County. Even if the claim were against individual defendants whose identities are unknown to Plaintiffs, the Complaint does not allege any facts about those individual defendants’ “personal participation” in the alleged rights deprivation. Without such facts, Plaintiffs have failed to state a Section 1983 claim against individual defendants. *Jones*, 297 F.3d at 934 (9th Cir. 2002); *accord Ahmed v. City of Antioch*, Case No. 16-CV-01693-HSG, 2016 WL 8729938, at *2 (N.D. Cal. July 1, 2016) (“Without allegations of personal participation by [the individual defendants], Plaintiffs’ claim must fail.”).

1 governmental entity's liability, a plaintiff must show: "(1) that [the plaintiff] possessed a
 2 constitutional right of which [s]he was deprived; (2) that the municipality had a policy; (3) that
 3 this policy amounts to deliberate indifference to the plaintiff's constitutional right; and (4) that the
 4 policy is the moving force behind the constitutional violation." *Id.* at 900 (quoting *Plumeau v. Sch.
 5 Dist. No. 40 Cty. Of Yamhill*, 130 F.3d 432, 438 (9th Cir. 1997)).

6 As the Ninth Circuit has stated, "[d]eliberate indifference is a 'stringent standard of fault.'" *Patel v. Kent Sch. Dist.*, 648 F.3d 965, 974 (9th Cir. 2011) (quoting *Bryan Cnty. v. Brown*, 520
 7 U.S. 397, 410 (1997)). Deliberate indifference "is a higher standard than gross negligence because
 8 'it requires a culpable mental state,' meaning that '[t]he state actor must recognize[] [an]
 9 unreasonable risk and actually intend[] to expose the plaintiff to such risks without regard to the
 10 consequences to the plaintiff.'" *Campbell v. State of Wash. Dep't of Soc. & Health Servs.*, 671
 11 F.3d 837, 846 (9th Cir. 2011) (quoting *Patel*, 648 F.3d at 974).

12 To meet the deliberate indifference requirement, Plaintiffs allege that the County "knew or
 13 should have known that [Harris] was unfit to be released prematurely." Compl. ¶ 12.⁴ Plaintiffs
 14 further allege that the County's discharge of Harris "lowered the safety and security conferred on
 15 [Harris] under federal, state, and/or local laws without due process and/or proper governmental
 16 purpose, thereby creating a danger to which [Harris] [fell] victim and doing so with deliberate
 17 indifference to the known and obvious danger [Harris] posed to himself." *Id.* ¶ 31. Plaintiffs then
 18 reiterate that the County's discharge of Harris "was a deliberate indifference to federal, state,
 19 and/or local law." *Id.* ¶ 34.

20 These allegations are conclusory, merely asserting that the County exhibited deliberate
 21 indifference without alleging facts that support that legal conclusion. Such conclusory allegations
 22 are insufficient to state a claim. *See Iqbal*, 556 U.S. at 1949–50 (stating that courts are "not bound
 23 to accept as true a legal conclusion couched as a factual allegation") (quoting *Twombly*, 550 U.S.
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 26 ⁴ This allegation does not suggest deliberate indifference but rather negligence, which is a lower
 27 standard of fault. Even if the County "knew or should have known" that Harris should not have
 been released, the County would merely be exhibiting negligence.

1 at 555); *Hadley v. Kellogg Sales Co.*, 243 F. Supp. 3d 1074, 1100 (N.D. Cal. 2017) (“*Twombly*
2 and *Iqbal* . . . require Plaintiff to plead facts, not conclusory allegations.”).

3 In addition, Plaintiffs have not identified a County policy or custom that “amounts to
4 deliberate indifference to the plaintiff’s constitutional right” and was “the moving force behind the
5 constitutional violation.” *Dougherty*, 654 F.3d at 900 (quotation omitted). Indeed, nowhere in the
6 Complaint do Plaintiffs identify any County policy or custom, nor do they allege that the policy or
7 custom amounted to deliberate indifference or was the moving force behind the alleged
8 constitutional violation in the instant case. This failure mandates dismissal of Plaintiffs’ claim. *Id.*
9 at 900–01 (affirming dismissal of Section 1983 claim because the Complaint did not allege “any
10 facts demonstrating that [the] constitutional deprivation was the result of a custom or practice of
11 the City. . . or that the custom or practice was the ‘moving force’ behind [the] constitutional
12 deprivation”); *accord A.E. ex rel. Hernandez v. County of Tulare*, 666 F.3d 631, 636–38 (9th Cir.
13 2012) (concluding that the plaintiff had not stated a Section 1983 claim because the plaintiff had
14 failed to plausibly allege that the County had a policy or custom).⁵

15 Based on these deficiencies, another Court in this District concluded that the plaintiffs had
16 failed to state a Section 1983 claim. In *Ahmed v. City of Antioch*, the successors-in-interest to a
17 decedent brought Section 1983 claims against several individuals and two municipalities after the
18 decedent was released from a psychiatric hold at a medical center based on suicidal ideation, and
19 the decedent subsequently jumped out of a taxi. 2016 WL 8729938, at *2. The plaintiffs alleged
20 that the defendants “‘knew, or should have known’ that it was ‘necessary to safeguard’ or
21 continually supervise an individual threatening suicide such as the decedent.” *Id.* The Court
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23 ⁵ Plaintiffs cite the Ninth Circuit’s decision in *Lee v. City of Los Angeles*, which states that “a
24 claim of municipal liability under section 1983 is sufficient to withstand a motion to dismiss ‘even
25 if the claim is based on nothing more than a bare allegation that the individual officers’ conduct
26 conformed to official policy, custom, or practice.’” 250 F.3d at 682–83 (quotation omitted).
27 However, following the Supreme Court’s decisions in *Twombly* and *Iqbal*, the Ninth Circuit
subsequently overruled this holding. *See A.E.*, 666 F.3d at 636–38. Furthermore, even if Plaintiffs
were right about the state of the law, Plaintiffs never made bare allegations that the County’s
conduct conformed to an official policy, custom, or practice.

concluded that the plaintiffs had failed to state a claim because “nothing in the complaint plausibly suggests that [the City] acted with the stringent levels of knowledge and intent that deliberate indifference requires.” *Id.* at *3. The Court also concluded that the plaintiffs had failed to state a claim because “Plaintiffs fail[ed] to allege that [the City] possessed a policy that was the moving force behind [the decedent’s] suicide.” *Id.* For the same reasons, the Court concludes that Plaintiffs have failed to state a Section 1983 claim in the instant case. Thus, the Court grants the County’s motion to dismiss Plaintiffs’ Section 1983 claim.

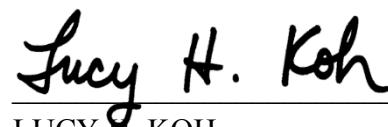
The remaining question is whether the motion should be granted with prejudice or leave to amend. Dismissal with prejudice is warranted when amendment would be futile, unduly prejudice the opposing party, or cause undue delay, or the moving party has acted in bad faith. *See Leadsinger*, 512 F.3d at 532. In the instant case, the Court is unsure whether Plaintiffs will be able to state a Section 1983 claim. However, Plaintiffs have not yet had an opportunity to amend their complaint. As a result, the Court cannot necessarily find that amendment would be futile, unduly prejudice Defendants, or cause undue delay. *See A.E.*, 666 F.3d at 637–38 (concluding that the district court abused its discretion by denying leave to amend where the plaintiff’s allegation of plausible facts could have cured the deficiency in his Section 1983 claim). In addition, Plaintiffs have not acted in bad faith. Thus, the Court GRANTS leave to amend.

IV. CONCLUSION

For the foregoing reasons, the Court GRANTS the County’s motion to dismiss Plaintiffs’ state law claims with prejudice and GRANTS the County’s motion to dismiss Plaintiffs’ Section 1983 claim with leave to amend. Plaintiffs shall file any amended complaint within 30 days of this Order. Failure to do so, or failure to cure deficiencies identified herein or identified in the instant motion to dismiss, will result in dismissal of the deficient claim with prejudice. Plaintiffs may not add new causes of action or add new parties without stipulation or leave of the Court. Plaintiffs are directed to file a redlined complaint comparing the complaint to any amended complaint as an attachment to Plaintiffs’ amended complaint.

1 IT IS SO ORDERED.
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Dated: December 8, 2020


Lucy H. Koh
United States District Judge

United States District Court
Northern District of California